

Senate Bill No. 1322

Passed the Senate April 4, 2002

Secretary of the Senate

Passed the Assembly June 10, 2002

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2002, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 512.060, 514.020, 515.010, 515.020, 703.580, and 703.610 of the Code of Civil Procedure, relating to debtor and creditor relations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1322, Ackerman. Debtor and creditor relations.

(1) Existing law permits a plaintiff to apply for a writ of possession, which must show, among other things, the basis of the plaintiff's claim and that the plaintiff is entitled to the property claimed. Existing law requires a hearing on a noticed motion before the writ of possession may be issued, except as specified, and prohibits a court from issuing a writ until the plaintiff posts an undertaking in a value of at least twice the defendant's interest. Existing law permits a defendant to post an undertaking to prevent the seizure of the property or reclaim it.

This bill would provide an alternative procedure for writs of possession if a court finds that a defendant has no interest in the property. The bill would require, under these circumstances, that a court waive the requirement of the plaintiff's undertaking and that the court determine the amount of the defendant's undertaking, as specified. The bill would also require a levying officer to deliver to the person in possession of the property a copy of the court order for issuance of the writ of possession.

(2) Under the existing Enforcement of Judgments Law, a judgment creditor may levy upon the property of a judgment debtor to satisfy the judgment, and the judgment debtor may claim that certain property is exempt from the levy by following a specified procedure. Under that existing law, a levying officer holds the property until the final determination of the exemption.

This bill would require that if an exemption of property, as described above, is not determined within a specified time, the property claimed to be exempt shall be released, unless otherwise ordered by the court. The bill would further permit a levying officer to release the property described above after an appeal is waived or the time for filing an appeal has expired.



The people of the State of California do enact as follows:

SECTION 1. Section 512.060 of the Code of Civil Procedure is amended to read:

512.060. (a) At the hearing, a writ of possession shall issue if both of the following are found:

(1) The plaintiff has established the probable validity of the plaintiff's claim to possession of the property.

(2) The undertaking requirements of Section 515.010 are satisfied.

(b) No writ directing the levying officer to enter a private place to take possession of any property shall be issued unless the plaintiff has established that there is probable cause to believe that the property is located there.

SEC. 2. Section 514.020 of the Code of Civil Procedure is amended to read:

514.020. (a) At the time of levy, the levying officer shall deliver to the person in possession of the property a copy of the writ of possession, a copy of the plaintiff's undertaking, if any, and a copy of the order for issuance of the writ.

(b) If no one is in possession of the property at the time of levy, the levying officer shall subsequently serve the writ and attached undertaking on the defendant. If the defendant has appeared in the action, service shall be accomplished in the manner provided by Chapter 5 (commencing with Section 1010) of Title 14. If the defendant has not appeared in the action, service shall be accomplished in the manner provided for the service of summons and complaint by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5.

SEC. 3. Section 515.010 of the Code of Civil Procedure is amended to read:

515.010. (a) Except as provided in subdivision (b), the court shall not issue a temporary restraining order or a writ of possession until the plaintiff has filed an undertaking with the court. The undertaking shall provide that the sureties are bound to the defendant for the return of the property to the defendant, if return of the property is ordered, and for the payment to the defendant of any sum recovered against the plaintiff. The undertaking shall be in an amount not less than twice the value of the defendant's interest in the property or in a greater amount. The value of the



defendant's interest in the property is determined by the market value of the property less the amount due and owing on any conditional sales contract or security agreement and all liens and encumbrances on the property, and any other factors necessary to determine the defendant's interest in the property.

(b) If the court finds that the defendant has no interest in the property, the court shall waive the requirement of the plaintiff's undertaking and shall include in the order for issuance of the writ the amount of the defendant's undertaking sufficient to satisfy the requirements of subdivision (b) of Section 515.020.

SEC. 4. Section 515.020 of the Code of Civil Procedure is amended to read:

515.020. (a) The defendant may prevent the plaintiff from taking possession of property pursuant to a writ of possession or regain possession of property so taken by filing with the court in which the action was brought an undertaking in an amount equal to the amount of the plaintiff's undertaking pursuant to subdivision (a) of Section 515.010 or in the amount determined by the court pursuant to subdivision (b) of Section 515.010.

(b) The undertaking shall state that, if the plaintiff recovers judgment on the action, the defendant shall pay all costs awarded to the plaintiff and all damages that the plaintiff may sustain by reason of the loss of possession of the property. The damages recoverable by the plaintiff pursuant to this section shall include all damages proximately caused by the plaintiff's failure to gain or retain possession.

(c) The defendant's undertaking may be filed at any time before or after levy of the writ of possession. A copy of the undertaking shall be mailed to the levying officer.

(d) If an undertaking for redelivery is filed and the defendant's undertaking is not objected to, the levying officer shall deliver the property to the defendant, or, if the plaintiff has previously been given possession of the property, the plaintiff shall deliver the property to the defendant. If an undertaking for redelivery is filed and the defendant's undertaking is objected to, the provisions of Section 515.030 apply.

SEC. 5. Section 703.580 of the Code of Civil Procedure is amended to read:

703.580. (a) The claim of exemption and notice of opposition to the claim of exemption constitute the pleadings,



subject to the power of the court to permit amendments in the interest of justice.

(b) At a hearing under this section, the exemption claimant has the burden of proof.

(c) The claim of exemption is deemed controverted by the notice of opposition to the claim of exemption and both shall be received in evidence. If no other evidence is offered, the court, if satisfied that sufficient facts are shown by the claim of exemption (including the financial statement if one is required) and the notice of opposition, may make its determination thereon. If not satisfied, the court shall order the hearing continued for the production of other evidence, oral or documentary.

(d) At the conclusion of the hearing, the court shall determine by order whether or not the property is exempt in whole or in part. Subject to Section 703.600, the order is determinative of the right of the judgment creditor to apply the property to the satisfaction of the judgment. No findings are required in a proceeding under this section.

(e) The court clerk shall promptly transmit a certified copy of the order to the levying officer. Subject to Section 703.610, the levying officer shall, in compliance with the order, release the property or apply the property to the satisfaction of the money judgment.

(f) Unless otherwise ordered by the court, if an exemption is not determined within the time provided by Section 703.570, the property claimed to be exempt shall be released.

SEC. 6. Section 703.610 of the Code of Civil Procedure is amended to read:

703.610. (a) Except as otherwise provided by statute or ordered by the court, the levying officer shall not release, sell, or otherwise dispose of the property for which an exemption is claimed until an appeal is waived, the time to file an appeal has expired, or the exemption is finally determined.

(b) At any time while the exemption proceedings are pending, upon motion of the judgment creditor or a claimant, or upon its own motion, the court may make any orders for disposition of the property that may be proper under the circumstances of the case. The order may be modified or vacated by the court at any time during the pendency of the exemption proceedings upon any terms that are just.



(c) If an appeal of the determination of a claim of exemption is taken, notice of the appeal shall be given to the levying officer and the levying officer shall hold, release, or dispose of the property in accordance with the provisions governing enforcement and stay of enforcement of money judgments pending appeal.



Approved _____, 2002

Governor

